

1 WILLIAM A. ISAACSON (*Pro hac vice*)
2 (wisaacson@bsfllp.com)
3 STACEY K. GRIGSBY (*Pro hac vice*)
4 (sgrigsby@bsfllp.com)
5 NICHOLAS A. WIDNELL (*Pro hac vice*)
6 (nwidnell@bsfllp.com)
BOIES SCHILLER FLEXNER LLP
1401 New York Avenue, N.W., Washington, DC 20005
Telephone: (202) 237-2727; Fax: (202) 237-6131

7 RICHARD J. POCKER #3568
(rpocker@bsfllp.com)
8 BOIES SCHILLER FLEXNER LLP
300 South Fourth Street, Suite 800, Las Vegas, NV 89101
9 Telephone: (702) 382-7300; Fax: (702) 382-2755

10 DONALD J. CAMPBELL #1216
(djc@campbellandwilliams.com)
11 J. COLBY WILLIAMS #5549
(jcw@campbellandwilliams.com)
12 CAMPBELL & WILLIAMS
13 700 South 7th Street, Las Vegas, NV 89101
14 Telephone: (702) 382-5222; Fax: (702) 382-0540

15 *Attorneys for Defendant Zuffa, LLC, d/b/a*
Ultimate Fighting Championship and UFC

17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

20 Cung Le, Nathan Quarry, Jon Fitch, Brandon
21 Vera, Luis Javier Vazquez, and Kyle
22 Kingsbury on behalf of themselves and all
others similarly situated,

23 Plaintiffs,

24 v.

25 Zuffa, LLC, d/b/a Ultimate Fighting
Championship and UFC,

26 Defendant.

27 Case No.: 2:15-cv-01045-RFB-(PAL)

28 **ZUFFA, LLC'S REPLY IN SUPPORT
OF ITS MOTION TO SEAL MOTION
FOR SUMMARY JUDGMENT AND
RELATED MATERIALS**

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INTRODUCTION

Out of Zuffa’s 40-page motion for summary judgment and 112 exhibits, which totaled over 1,700 pages, the vast majority of material was publicly filed. The narrow category of information that Zuffa lodged under seal is: Zuffa’s competitively sensitive business information, third parties’ sensitive personal or business information, and the private compensation and contractual information of Zuffa athletes. Plaintiffs now contend that “none of the documents Zuffa asks the Court to seal contain trade secret information” (Opp. at 5) and as a result that all of these materials aside from a narrow category of third-party documents should be unsealed. Plaintiffs are wrong. The sealed documents fall squarely within established categories the Ninth Circuit has held meet the compelling reason standard and even include some categories of documents, like Zuffa’s promotional agreements, which this Court has already held meet that standard. ECF Nos. 495, 504. Plaintiffs’ attempt to disclose the putative class members’ compensation and other contractual information is also contrary to the interests of the very people Plaintiffs are supposed to represent.

For the below reasons and those laid out in detail in Zuffa's motion to seal (ECF No. 577),
Zuffa respectfully requests the Court grant Zuffa's sealing motion.

ARGUMENT

A. Zuffa Has Met the Compelling Reasons Standard for Sealing.

The Supreme Court has explained that the “right to inspect and copy judicial records is not absolute” and access is properly denied where court files would serve “as sources of business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns*, 435 U.S. 589, 598 (1978) (citations omitted). To balance the need to protect personal or competitively sensitive information, the Ninth Circuit has set out the compelling reasons standard which allows materials to remain under seal where a movant “articulate[s] compelling reasons supported by specific factual findings” of keeping materials under seal that “outweigh the general history of access.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (citations omitted).

1 Zuffa has met that standard. In its motion to seal, Zuffa went through the 40 pages of its
 2 motion as well as the over 1,700 pages of its 112 exhibits, to identify specific portions of its
 3 motion and exhibits that it moves to seal. Zuffa provided individualized compelling reasons for
 4 each document, or portion thereof, it lodged under seal—following established case law defining
 5 the type of material that is properly sealed—and provided a declaration confirming the
 6 competitive harm that could result if the information contained in those exhibits was publicly
 7 disclosed. Mot. at 2-10 & Grigsby Decl. (ECF No. 577-1).

8 The information that Zuffa seeks to seal includes its contracts and negotiations with
 9 athletes, its financial and revenue information, its business strategy documents and other
 10 proprietary business information. Ninth Circuit precedent squarely holds that these categories of
 11 information can be sealed under the compelling reasons standard. *E.g., In re Elec. Arts, Inc.*, 298
 12 F. App'x 568, 569 (9th Cir. 2008) (finding compelling reasons to seal categories of information
 13 including pricing terms, royalty rates, guaranteed minimum payment terms, trade secret
 14 information, and business information that, if released, might cause competitive harm). Other
 15 courts in this district have also held that compelling reasons exist to seal these categories of
 16 information. *Selling Source, LLC v. Red River Ventures, LLC*, 2011 WL 1630338, at *6-7 (D.
 17 Nev. Apr. 29, 2011) (finding compelling reasons to seal “detailed information regarding Selling
 18 Source’s business operations, customer agreements, corporate structure, the details of Selling
 19 Source’s customer base and how the company works with and licenses products to its customers
 20 and measures it takes to protect its intellectual property,” including the “Master Service
 21 Agreement” and “License Agreement”); *Bartech Int’l, Inc. v. Mobile Simple Sols., Inc.*, 2016 WL
 22 2593920, at *3 (D. Nev. May 5, 2016) (finding compelling reasons to seal “account list” that
 23 “evidences the terms of numerous agreements, reveals revenue figures, and lists technical
 24 information regarding each contract,” as well as “business plan created by Plaintiff for a specific
 25 client”); *J.M. Woodworth Risk Retention Grp., Inc. v. Uni-Ter Underwriting Mgmt. Corp.*, 2014
 26 WL 12769806, at *1–2 (D. Nev. May 20, 2014) (finding compelling reasons to seal documents
 27 “that contain proprietary and confidential information about the corporate structure and internal

1 governance of Plaintiff's business") (Leen, J.); *Aevoe Corp. v. AE Tech. Co.*, 2013 WL 5923426,
 2 at *1–2 (D. Nev. Nov. 1, 2013) (finding compelling reasons to seal individual employment
 3 agreement). Zuffa's exacting identification of what materials should be sealed and its
 4 individualized and detailed explanations for sealing those materials is consistent with the general
 5 rule that the public shall have access to judicial records except for when the compelling reasons
 6 standard is met, as it is here.

7 Plaintiffs' opposition cites an out-of-circuit case, *Shane Grp. Inc. v. Blue Cross Blue Shield*
 8 *of Michigan*, for the proposition that the standards for sealing records should be applied with
 9 particular strictness in class action cases. Opp. at 1 (citing *Shane Grp.*, 825 F.3d 299 (6th Cir.
 10 2016)). But the Ninth Circuit has only one standard for sealing a dispositive motion—the long-
 11 standing and well-settled “compelling reasons” standard. Furthermore, the facts of *Shane* bear no
 12 resemblance to the facts in this case. In *Shane*, the court had already certified a class and
 13 approved a preliminary settlement but had sealed (1) the amended complaint, (2) the motion for
 14 class certification, (3) the opposition to class certification, (4) Defendants' *Daubert* motion, and
 15 (5) plaintiff's expert's report. *Id.* at 306. The court found that the class members who sought to
 16 evaluate that settlement could not because they could “access only fragmentary information about
 17 the conduct giving rise to this litigation, and next to nothing about the bases of the settlement
 18 itself.” *Id.* In contrast, here no class has yet been certified, no settlement is at issue, and the
 19 complaint is fully public and the *vast* majority of the class certification, *Daubert* briefing and
 20 Zuffa's summary judgment motion and related exhibits to those filings are publicly available. In
 21 addition, contrary to their representations in their Opposition (*e.g.*, Opp. at 2 [discussing the
 22 “important right of access for the named Plaintiffs”]), named Plaintiffs have *not* been denied
 23 access even to the information Zuffa seeks to file under seal. Pursuant to the Protective Order,
 24 Plaintiffs have full access to materials designated as Confidential and filed under seal. ECF No.
 25 7.2(b).

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1 **B. Plaintiffs Advance an Incorrect Interpretation of a Trade Secret.**

2 Plaintiffs' motion contends that "none of the documents Zuffa asks the Court to seal
 3 contain trade secret information" and provides a few cherry-picked examples in an attempt to
 4 distract from the Ninth Circuit's well-settled standard for sealing. Opp. at 5-8. In support of their
 5 off-the-mark claims, Plaintiffs provide only sweeping conclusory arguments that misapprehend
 6 the Ninth Circuit's trade secret precedent.

7 The Ninth Circuit has adopted the Restatement of Torts definition of "trade secret" as "any
 8 formula, pattern, device or compilation of information which is used in one's business, and which
 9 gives him an opportunity to obtain an advantage over competitors who do not know or use
 10 it." *Clark v. Bunker*, 453 F.2d 1006, 1008-09 (9th Cir. 1972) (finding that a "detailed plan for the
 11 creation, promotion, financing and sale of contracts" constitutes a trade secret); *see also In re*
 12 *Elec. Arts, Inc.*, 298 F. App'x at 569. District courts within this Circuit have explained that
 13 "[w]here the material includes information about proprietary business operations, a company's
 14 business model or agreements with clients, there are compelling reasons to seal the material
 15 because possible infringement of trade secrets outweighs the general public interest in
 16 understanding the judicial process." *Selling Source*, 2011 WL 1630338, at *6; *see also In re*
 17 *ConAgra Foods, Inc.*, 2014 WL 12577133, at *4 (C.D. Cal. Dec. 29, 2014) (citing cases) ("Courts
 18 routinely find that the risk of competitive harm arising from the public disclosure of internal
 19 business documents constitutes a compelling reason that justifies sealing").

20 Plaintiffs' motion takes various quotes out of context to contend that certain of the
 21 materials that Zuffa has designated do not meet this standard. For example, Plaintiffs contend
 22 that portions of Mr. Mersch's deposition testimony do not contain trade secret information
 23 because it is "about a *hypothetical* contract." Opp. 5. But the discussion in the deposition is
 24 about the operation and legal effect of *actual* terms and clauses in Zuffa's contracts, which
 25 constitutes Zuffa's proprietary information and which this Court has already held meets the
 26 compelling reasons standard. *See MSJ Ex.¹ 14 at 326:1-328:12* (portion of the deposition of

27 ¹ For brevity, "MSJ Ex." is used to refer to Exhibits to the Declaration of Suzanne Jaffe Nero,
 28 ECF No. 574, which was included as part of Zuffa's Motion for Summary Judgment.

1 Michael Mersch discussing actual Zuffa contractual clauses in detail); *e.g.*, MSJ Ex. 55, ZFL-
 2 0504184, at -195 (Zuffa contract with UFC athlete including the contractual clauses discussed in
 3 the Mersch deposition); ECF No. 495. Similarly, Plaintiffs contend that information about the
 4 purpose of Zuffa’s exclusivity clause is publicly available. Opp. at 9. But the discussion Zuffa
 5 seeks to seal is from its corporate representative’s 30(b)(6) testimony on Fighter Contracts that
 6 discusses Zuffa’s specific contract language, the way that the contractual language has changed
 7 over time, and the purpose and effect of those changes. MSJ Ex. 48 at 95:96:20, 97:23-98:10,
 8 153:6-12, 243:24-244:13. This information goes to the heart of Zuffa’s proprietary business
 9 decisions and is properly filed under seal as a trade secret. *See Selling Source*, 2011 WL
 10 1630338, at *6.

11 Oddly, Plaintiffs also argue that Zuffa’s wage share information—that is, detailed event-
 12 by-event information comparing Zuffa’s event revenue to the amount of compensation paid to
 13 athletes competing in that event—should not be sealed because Zuffa has argued “that wage share
 14 is not a meaningful economic concept.” Opp. at 6. This argument is misguided. The question of
 15 whether this Court should accept wage share as proof of antitrust injury is distinct from whether
 16 that information is properly sealed. Wage share information is properly sealed because it is a
 17 compilation of information regarding Zuffa’s “volume of business” and highly confidential trends
 18 (and sales) in Zuffa’s business. *Del Campo v. Am. Corrective Counseling Servs., Inc.*, 2007 WL
 19 902568, at *5 (N.D. Cal. Mar. 22, 2007) (citing *Walker v. University Books, Inc.*, 602 F.2d 859,
 20 865 n. 2 (9th Cir. 1979)). As Zuffa has previously explained at length, detailed wage share
 21 information—whether used on its own or in conjunction with regression analysis—would provide
 22 competitors with unearned insights into Zuffa’s investment, expense, and spending decisions,
 23 which would permit them to have a “roadmap” to Zuffa’s business and allow those competitors to
 24 cause competitive harm to Zuffa for their benefit. ECF No. 565, Zuffa’s Reply in Supp. of Mot.
 25 to Seal Pls.’ Class Cert Reply at 5-6. Relatedly, Plaintiffs also contend that Zuffa improperly
 26 attempts to seal Plaintiffs’ damages amount. Opp. at 8. But, as Plaintiffs acknowledge later, the
 27 damages amounts are public. *Id.* n.7. Zuffa seeks to seal regressions and other analytical work

1 which, if publicly disclosed, would result in the disclosure of Zuffa and third party highly
 2 confidential revenue trends, strategic spending and investment decisions, and other highly
 3 confidential trade secret information—not Plaintiffs’ aggregate damage estimates.

4 Plaintiffs’ other examples are similarly misleading and reveal a fundamental
 5 misunderstanding about what constitutes a trade secret. Trade secrets not only consist of things
 6 like Zuffa’s “Roadmap to Developing New Markets” (Ex. 2 at -112) or five-year business plan,
 7 including “key drivers” and “revenue projections” (Ex. 46 at -017), which unquestionably
 8 constitute trade secrets, but also other information about a company’s proprietary business
 9 operations as well. *Selling Source*, 2011 WL 1630338, at *6.

10 The *combined effect* of disclosing various portions of Zuffa’s proprietary business practices
 11 must be considered when evaluating whether Zuffa has met the compelling reasons standard. In
 12 granting a motion to seal trade secret information, the *Del Campo* court recognized that binding
 13 precedent holds that “one factor in determining whether information is a trade secret is the ease or
 14 difficulty with which the information could be properly acquired or duplicated by others.” 2007
 15 WL 902568, at *5 (citing *Walker*, 602 F.2d at 856 n.2). *Del Campo* and the Ninth Circuit *Walker*
 16 decision stand for the proposition that if competitors could successfully use the various pieces of
 17 a business’s proprietary information to more effectively compete, then that information may
 18 constitute a trade secret. In *Apple Inc. v. Samsung Electronics Co.*, 727 F.3d 1214, 1224-25 (Fed
 19 Cir. 2013), the Federal Circuit, applying Ninth Circuit law, held that “detailed product-specific
 20 information concerning such things as costs, sales, profits, and profit margins qualifies as trade
 21 secrets,” reversing the district court’s decision denying the motion to seal under the compelling
 22 reasons standard. Reaching this conclusion, the Federal Circuit considered the *combined effect* of
 23 disclosing separate pieces of business information. *Id.* at 1225 (“If Apple’s and Samsung’s
 24 suppliers have access to their profit, cost, and margin data, it could give the suppliers an
 25 advantage in contract negotiations, which they could use to extract price increases for
 26 components. This would put Apple and Samsung at a competitive disadvantage compared to their
 27 current position” (internal citation omitted)). Here, as in those cases, access to Zuffa’s

1 contractual terms, wage share level, and other proprietary information would give competitors a
 2 roadmap to replicate the same business model that it took Zuffa years to refine.

3 In this case, the compelling reasons justifying sealing outweigh the public interest in access
 4 to the narrow categories of information that Zuffa seeks to seal with its motion for summary
 5 judgment.

6 **C. Plaintiffs Seek to Disclose Information this Court Previously Held Meets the
 7 Compelling Reasons Standard.**

8 This Court has already held that Zuffa's contracts with athletes and other related business
 9 documents that contain financial terms meet the compelling reasons standard for sealing. ECF
 10 Nos. 495, 504. This Court's Orders are amply justified as Zuffa's promotional agreements
 11 contain "specific contractual terms, financial payments, benefits and obligations negotiated with
 12 an athlete," the disclosure of which would "provide competitors with unfair and damaging
 13 insights into Zuffa's business practices." ECF No. 349-1 ¶ 8; *see also* ECF No. 565-3 (Decl. of
 14 Wm. Hunter Campbell ¶¶ 3, 5-6 (disclosure of "the amounts and benefits Zuffa is willing to offer
 15 an athlete – in addition to information regarding Zuffa's negotiation strategy and tactics – could
 16 and would be used by competitors to gain an advantage in negotiations with such athletes").

17 Zuffa is not alone in recognizing the competitive harm that could result from the disclosure
 18 of this information. The President of Zuffa's largest domestic competitor, Bellator, also
 19 confirmed that "if individual athlete contract information were provided to Bellator's competitors,
 20 they would be able to anticipate Bellator's recruitment strategies, outflanking its ability to sign
 21 the best fighters, anticipating strategies in each respective weight class and geographic market,
 22 and compromising its strategic plans to develop the best overall promotion." *Le v. Zuffa*, 17-cv-
 23 00849-RFB-PAL, ECF No. 1-3 (Decl. of Bellator President Scott Coker at ¶ 15). Plaintiffs
 24 contend that because the *same* athlete's promotional agreement is not at issue here, that this
 25 Court's prior ruling should not apply. Opp. at 14. Plaintiffs are wrong. All promotional
 26 agreements with athletes contain the same type of information that this Court held properly met
 27 the compelling reasons standard. That Zuffa included an agreement with a different athlete with

1 different compensation terms and conditions, does not change the competitive harm that could
 2 result if this information is disclosed.

3 Plaintiffs also contend that another court held that the information and language contained
 4 in its contracts failed to meet the compelling reasons standard. This is not so. ECF No. 579
 5 (Zuffa's Response to Plaintiffs' Notice of Supplemental Authority). That court denied without
 6 prejudice a motion to seal that attempted to justify sealing under the wrong legal standard. *Id.* A
 7 new sealing motion has since been re-filed and is currently pending. *Id. No Court has ever*
 8 ***rejected Zuffa's motion to seal its promotional agreements with its athletes and publicly***
 9 ***disclosed that information.***

10 Plaintiffs also argue that some of the promotional agreements are too old to contain trade
 11 secrets. Opp. at 10. Plaintiffs ignore that this Court has already found compelling reasons to seal
 12 a promotional agreement from 2004. ECF No. 495 (sealing Ex. D). And for good reason. Many
 13 (but not all) of the terms of Zuffa's contracts have remained the same or similar for years and
 14 Plaintiffs fail to provide a coherent method of determining when trade secret or commercially
 15 sensitive information becomes "too old to hold any value." *ConAgra Foods*, 2014 WL 12577133,
 16 at *4 ("Even if the information pertains to vehicles sold more than five years ago, the Court has
 17 no reason to believe that pricing methods or the information considered pertinent to pricing
 18 strategies has since changed").

19 Finally, Plaintiffs contend that this Court's prior rulings should not hold because under the
 20 Protective Order they are permitted to challenge a confidentiality designation at any time. Opp. at
 21 2. Plaintiffs' argument misses the mark. Zuffa has not argued that Plaintiffs' challenge is
 22 untimely, but rather that this Court already made a determination and held that Zuffa's athlete
 23 agreements meet the compelling reasons standard for sealing. ECF Nos. 495, 504. It is irrelevant
 24 whether Plaintiffs agree with this finding or not because the Court's order is now the law of the
 25 case.

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1 **D. Plaintiffs Ignore the Interests of the Putative Class in Seeking Public
2 Disclosure of Their Sensitive Information.**

3 Plaintiffs purport to represent the interests of the athletes in the putative class but have
4 disregarded their interests in calling for the release of these athletes' contracts, negotiations,
5 compensation, and other sensitive information. Many athletes do not want the terms of their
6 contracts to be publicly released and for some, release of that information—in particular
7 compensation information—would threaten their and their families' safety. Decl. of Ali
8 Abdelaziz ¶¶ 4-5. "The privacy interests of innocent third parties should weigh heavily in a
9 court's balancing opinion" of access to judicial records. *United States v. Amodeo*, 71 F.3d 1044,
10 1050 (2d Cir. 1995) (citation and quotation marks omitted). In Plaintiffs' haste to try this case in
11 the court of public opinion, they have ignored the privacy interests of the absent class members
12 that they are supposed to represent.

13 **CONCLUSION**

14 For the foregoing reasons and those in Zuffa's motion to seal (ECF No. 577), Zuffa
15 respectfully requests the Court grant its motion to seal.
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1 Dated: August 20, 2018
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4 **BOIES SCHILLER FLEXNER LLP**
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6 By: /s/ Stacey K. Grigsby
7

8 William A. Isaacson (admitted *pro hac vice*)
9 Stacey K. Grigsby (admitted *pro hac vice*)
10 Nicholas A. Widnell (admitted *pro hac vice*)
11 1401 New York Ave, NW
12 Washington, D.C. 20005
13 Phone: (202) 237-2727/Fax: (202) 237-6131
14 wisaacson@bsflp.com
15 sgrigsby@bsflp.com
16 nwidnell@bsflp.com

17 *Attorneys for Defendant Zuffa, LLC, d/b/a*
18 *Ultimate Fighting Championship and UFC*

19 **CAMPBELL & WILLIAMS**
20

21 Donald J. Campbell (State Bar No. 1216)
22 J. Colby Williams (State Bar No. 5549)
23 700 South 7th Street
24 Las Vegas, Nevada 89101
25 Phone: (702) 382-5222/Fax: (702) 382-0540
26 djc@campbellandwilliams.com
27 jcw@campbellandwilliams.com

28 *Attorneys for Defendant Zuffa, LLC, d/b/a*
29 *Ultimate Fighting Championship and UFC*

30 **BOIES SCHILLER FLEXNER LLP**
31

32 Richard J. Pocker (State Bar No. 3568)
33 300 South Fourth Street, Suite 800
34 Las Vegas, Nevada 89101
35 Phone: (702) 382-7300/Fax: (702) 382-2755
36 rpocker@bsflp.com

37 *Attorneys for Defendant Zuffa, LLC, d/b/a*
38 *Ultimate Fighting Championship and UFC*

1
2 **CERTIFICATE OF SERVICE**
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7 The undersigned hereby certifies that the foregoing Zuffa, LLC'S Reply in Support of Its
8 Motion to Seal Motion for Summary Judgment and Related Materials was served on August 20,
9 2018 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service
10 list.
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/s/ *Roderick Crawford*

Roderick Crawford